IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 438 OF 2007

Shri Satyajeet Hanumantrao Bhand ..Petitioner

Vs.

1. State of Maharashtra and ors. ..Respondents

Mr. A.V. Antrukar i/by Mr. S.B. Deshmukh for the petitioner.
Mr. Niranjan Pandit, AGP for respondent nos.1 to 3.

CORAM: B.H. MARLAPALLE &
S.R. SHATHE, JJ.

Reserved on : September 26, 2007.

Pronounced on : October 04, 2007.

P.C.:

1. Heard Mr. Anturkar with Mr. Deshmukh the learned counsel for the petitioner.

2. Rule. Mr. Niranjan Pandit, the learned AGP waives service for respondent nos.1 to 3. By consent of the parties, the Rule is made returnable forthwith and the petition is heard finally.

3. This petition filed under Article 226 of the Constitution impugns the decision of the Maharashtra Administrative Tribunal Mumbai-Bench in O.A. No.653

of 2004 which was filed by the petitioner and the O.A. came to be dismissed by the Division Bench of the Tribunal on 23/2/2006.

4. The factual matrix, leading to this petition, could be briefly stated as under:-

. In the year 2001 the respondent no.2 had invited applications for various gazetted posts, including the posts of Deputy Superintendent of Police and Sales Tax Officer etc. For the post of Dy.S.P. 13 posts (10 from open category and 3 from reserved category) and for the post of STO 42 posts (21 from open category and 21 from reserved category) were advertised by Notification No.1477(2)/2001/3 of the main entrance exam. The petitioner belongs to the Dhangar community, which is notified as NT-C category as per the Notification dated 25/5/1995. For the post of Dy.S.P. there was no reserved post for NT-C category out of the three posts reserved, but for the post of STO one post was shown reserved for NT-C category from the 21 posts reserved from various categories. The entrance examination was held in November, 2001 and the result of main was declared in

January 2003. The petitioner appeared for the oral interview on 25/2/2003 and in the final result declared on 5/7/2003 he was declared to be a successful candidate and was recommended for the post of STO - Class-I. The petitioner claims that though there was no reservation shown for the post of Dy.S.P. in NT-C category, he had given his first preference for the said post and his second preference was for the post of STO. He submitted a representation on 3/12/2003 raising a grievance that the respondents had committed illegality in not showing reservation in the post of Dy.S.P. for the NT-C category. He joined on 14/1/2004 in the post of STO and submitted the second representation on 2/6/2004. Finally he filed O.A. No.653 of 2004 before the MAT and prayed for directions against the respondents to allocate one post of Dy.S.P. for NT-C category and further directions to allocate this one post in accordance with the merit of the candidates in the State Services Main Examination 2001. He also prayed for quashing and setting aside the allotment of posts of Dy.S.P., STO as well as Tahsildar as reflected in Annexure "A" to the petition memo and to direct the respondents to forthwith implement the GR dated 29/3/1997 in its

letter and spirit for the purpose of making appointments to the various posts available under the State Services Main Examination 2001.

5. While dismissing O.A. No.653 of 2004 the Tribunal noted that though the petitioner's first preference was for the post of Dy.S.P. he had accepted and joined in the post of STO on the basis of his selection for the reserved post under NT-C category and thus he was granted the benefit of reservation for the post of STO and, therefore, having gone through the process of selection it was not permissible for the petitioner to challenge the correctness of the selection process. The Tribunal referred to the decisions of the Supreme Court in the case of University of Cochin vs. N.S. Kanjoonjamma and ors. [(1997) 4 SCC 436], Chandra Prakash Tiwari & Ors. vs. Shakuntala Shukla and ors. [(2002) 6 SCC 127] and Mohd. Raizul Usman Gani & Ors. vs. District and Sessions Judge, Nagpur and ors. [(2002) 2 SCC 606]. The Tribunal also considered the case on merits regarding the non reservation in the post of Dy.S.P. for the NT-C category. It rejected the contention of the petitioner that the total cadre

strength in the post of Dy.S.P. was 517 upto the year 2001 and it accepted the State's figure of 398 posts in the said cadre. It further accepted the contention of the respondents that in the cadre of Dy.S.P. four posts were reserved for NT-C category upto 2001 and all of them were filled in by the Officers belonging to the said category and, therefore, there was no reservation shown for the State Services Main Examination 2001 for NT-C.

6. While challenging the correctness of the view taken by the Tribunal, the petitioner has relied upon the decision of the Tribunal in the case of Dr. Jayashree L. Katare vs. State of Maharashtra [O.A. No.640 of 1999] rendered on 29/9/2000. The Tribunal in Dr. Katare's case had accepted her claim that the respondents had acted illegally by not providing reservation for women candidates in the post of Dy. Collector and directed the State Government to offer the petitioner the next available vacancy in the said post. For the implementation of the directions issued in the said case, Writ Petition No. 4926 of 2003 came to be filed before this court by Dr. Jayashree Katare. The said petition came to be allowed by this

court on 28/2/2006 by directing the respondents to take steps to issue letter of appointment to Dr.Jayashree Katare for the post of Dy.Collector, though she was appointed in the post of STO against the posts reserved for women and she had joined in the said post. He has also relied upon the decisions in the case of R.K. Sabarwal and ors. vs. State of Punjab and ors. [1995 (2) SCC 745], Chandar Pal and ors. Vs. State of Haryana [(1997) 10 SCC 474] and the GRs dated 29/3/1997, 18/10/1997 and 10/3/1999 in support of his contentions that in the State Services Main Examination 2001 one post of Dy.S.P. ought to have been reserved for the NT-C category. The petitioner further submitted that if one post was reserved for NT-C category for Dy.S.P., he could have been selected against the said post as he was second in the merit list of NT-C category candidates and Dr. Sushil Shelke, who was the first in the merit list and above the petitioner, had not given first preference to the post of Dy.S.P. As per him by not reserving any post for NT-C category for Dy.S.P. in the State Services Main Examination 2001, the respondents acted in contravention of the GRs dated 29/3/1997, 18/10/1997 as well as the law laid down by the Supreme

Court in the case of R.K. Sabarwal (Supra) and, therefore, the view taken by the Tribunal by dismissing his O.A. was unsustainable. In the first instance he claimed that two posts ought to have been reserved for NT-C category for Dy.S.P. in the State Services Main Examination 2001. He claims that for the NT-C category there is a reservation of 3.5% for the post of Dy.S.P. and the total cadre strength is taken to be 517 upto the year 2001. The number of posts reserved for the said category would be six and only four candidates belonging to the said category were holding the said posts. Thus leaving behind a backlog of two posts till the year 2001. At the same time, the petitioner claims that two officers out of the four already appointed to the post of Dy.S.P. and shown to be belonging to NT-C category could not be counted as appointed against reserved posts. As per the petitioner Shri Mandlik appointed in the year 1987 and Shri Shegar appointed in the year 1992 could not be counted against the NT-C category as the said category came into existence for the first time in the year 1995 and both these officers were appointed much prior in time. The petitioner states that during the years 1995 to 1998 only two officers belonging to NT-C

category were appointed in the post of Dy.S.P., namely, Shri Avinash Bargal and Shri Balasaheb Waghmode and thus there was a backlog of two posts upto the year 2001 even if it is treated that the cadre strength in the post of Dy.S.P. was 398 and not 517.

7. The respondents on the other hand have supported the impugned judgment of the Tribunal and have adopted the affidavit-in-reply filed before the Tribunal to oppose this petition. As directed by us, the Joint Secretary, Home Department, Government of Maharashtra has filed an affidavit clarifying the number of officers in the NT-C category in the post of Dy.S.P. upto the year 2001 and other related issues. It is stated that the post of Dy.S.P./Assistant Commissioner of Police (Unarmed) is filled in as per the Recruitment Rules, 1980 and by promotion and nomination in the ratio of 70:30 respectively and these appointments are made on the basis of the recommendations made by the respondent no.2 - Commission. If the total cadre strength of 398 is taken upto the year 2001, 30% posts required to be filled in by nomination would come to 119 and the

balance 70% would be filled in by promotion. Reservation at 3.5% for NT-C category from amongst 119 posts would come to 4.16 i.e. four posts upto the year 2001. It is reiterated that the appointment of Shri Mandlik and Shri Shegar has to be counted against NT-C category as the contention of the petitioner that they are appointed on merit and against a open post is incorrect. It has been emphasised that these two officers belonging to the Dhangar community came to be appointed against the posts reserved. Mr. Mandlik was appointed on the basis of the result of the State Services Main Examination 1986 and Mr. Shegar was appointed on the basis of the result of the State Services Main Examination 1990 and against the post reserved for OBC and VJNT respectively. It is pointed out that the Dhangar community was initially shown in the OBC category and subsequently it was included in the VJNT category and it remained in the VJNT category till the year 1994. It is under these circumstances that for the State Services Main Examination 2001 there was no post reserved for NT-C category in the cadre of Dy.S.P. as all the four posts available were filled in, as per the State Government.

8. It has been further stated in the affidavit filed by the Joint Secretary in the Department of Home, Government of Maharashtra, that when the requisition was sent for the State Services Main Examination 2001, the following four officers belonging to the Dhangar NT-C caste and appointed by nomination were already on the rolls and thus the quota of four posts in the share of NT-C category was already filled in,

(a) Shri D.Y. Mandlik

(b) Shri B.G. Shegar

(c) Shri B.B. Waghmode

(d) Shri A.M. Bargal

The affidavit further states that Shri Mandlik was appointed on the recommendations of the MPSC from the OBC reserved category on the basis of the result of the State Services Main Examination 1986, whereas Shri Bargal was appointed on the recommendations of the MPSC from the VJNT reserved category on the basis of the result of State Services Main Examination 1990. By filing a rejoinder, the petitioner has contended

that Shri Mandlik was appointed in the open category. We, therefore, called upon the learned AGP to submit the record so as to show that Shri.Mandlik was appointed against a reserved seat for OBC. Accordingly, the learned AGP placed before us a copy of the letter dated 11/2/1986 sent by the Home Ministry to the MPSC requesting to take appropriate steps to fill in five posts of Dy.S.P. by nomination and on completion of the selection process i.e. after the results of the State Services Main Examination 1986, the MPSC vide its letter dated 13/10/1987 forwarded the list of five selected candidates to the Home Department and in the said list the name of Shri Mandlik is at Sr.No.2 and it is clearly indicated that he has been selected against a reserved seat for OBC. Mr. Anturkar pointed out that in the said list there is another candidate by name Shri K.G. Patil at Sr.No.4 who also has been selected against a post reserved for OBC. However, the letter sent by the MPSC to the Home Department, as referred to hereinabove, clearly states that Shri Mandlik is the candidate who has been appointed against a post reserved for OBC amongst five candidates selected for appointment to the post of Dy.S.P./ACP. Similarly,

the learned AGP has placed before us a copy of the letter dated 17/8/1991 written by MPSC to the Secretary, Department of Home, Government of Maharashtra forwarding a list of 22 candidates selected for the post of Dy.S.P./ACP (14 from open, 3 from Scheduled Caste, 2 from Scheduled Tribes, 1 from VJ and VJNT and two from OBC). The candidate at Sr.No.16 in the said list is Shri B.G. Shegar, shown to have been selected against a post reserved for VJNT. It has been further pointed out by the Government that Shri B.B. Waghmode and Shri A.M. Bargal were the two other candidates selected against the posts reserved for Dhangar NT-C and, therefore, the quota of four posts was duly filled in. It has been further clarified that Shri R.U. Shrirame is a candidate who has been appointed in the State Services Main Examination 2003 against a post reserved for NT-C.

9. Though the State Government opposed the Writ Petition on the preliminary point that the petitioner having been selected for the post of STO against a reserved quota for NT-C and he was aware that there

was no reservation for the said category in the post of Dy.S.P, he could not subsequently turn around and challenge the selection process consequent to the State Services Main Examination 2001. We do not agree with these submissions in as much as the petitioner has not challenged the selection process. On the contrary, before he joined the post of STO for which he was selected, he had submitted a representation raising a grievance that in the post of Dy.S.P./ACP no reservation for NT-C was shown and the same act of the State Government was illegal, arbitrary and in disregard to the settled law. We agree with Mr.Anturkar that on this issue the petitioner is supported by the decision of the Tribunal in the case of Dr. Jayashree Katare in O.A. No.640 of 1990 (Supra) and we hold that the Original Application filed by the petitioner could not be dismissed on such a preliminary point and rightly the Tribunal has considered the same on merits as well.

10. The two main issues that fall for our considerations are, (a) what was the cadre strength of Dy.S.P./ACP when the State Services Main Examination 2001 was held and (b) whether the reservation quota of

3.5% for NT-C category in the post of Dy.S.P./ACP was filled in by nomination when the State Services Main Examination 2001 was held.

11. So far as the first issue is concerned, the petitioner claims that the cadre strength was 517 when the State Services Main Examination 2001 was held, whereas the State Government has consistently taken the stand that the cadre strength at that time was 398. The Tribunal has accepted the submissions made by the State Government that the cadre strength was, in fact, 398 and it was not 517, as contended by the petitioner. Before the Tribunal the petitioner did not take any steps to call for the record to prove his point that the cadre strength was 517 or to disprove the claim of the State Government that it was 398. Even before us the State Government has maintained that the cadre strength was 398. We are of the considered opinion that such a dispute raised by the petitioner cannot be adjudicated upon in a writ petition, more so when the petitioner had all the opportunity to call for the record when the Tribunal was considering his O.A. At the same time, no reliable material has been placed before us to

disbelieve the statement of the State Government that the cadre strength was 398 at the relevant time and not 517. We, therefore, accept that the cadre strength was 398 when the State Services Main Examination 2001 was held. As noted earlier, the ratio for appointments by promotion and nomination in the post of Dy.S.P./ACP is 70:30 and accordingly a total of 119 posts would be available for direct recruitees. The quota for NT-C category is admittedly 3.5% which comes to four posts out of 119 posts.

12. By the Government Resolution dated 13/10/1967 the Dhangar caste was included in Other Backward Classes (at Sr.No.32) by the State Government. However, by the subsequent GR dated 25/5/1990 the same caste was included in the category of VJNT (at Sr.No.29). By the GR dated 23/3/1994, the State Government classified Dhangar caste in NT-C. By this resolution the VJNT group was sub-divided in four different categories, namely, VJ-A, NT-B, NT-C and NT-D. In the said resolution the reservation fixed for all these four categories is as under:-

(a) VJ-A : 3%

(b) NT-B : 2.5%

(c) NT-C : 3.5%

(d) NT-D : 2%

. Shri Mandlik who was selected in the State Services Main Examination 1986 against a post reserved for OBC, undisputedly, belongs to Dhangar caste and the said caste was in OBC category at that time in view of the GR dated 13/10/1967. Shri Shegar was selected in the State Services Main Examination 1990 and, therefore, the GR dated 25/5/1990 was applicable and as per the same the Dhangar caste was classified by the State Government in VJNT and he was selected accordingly, as he belongs to the Dhangar caste. The petitioner does not dispute the selection of the remaining two candidates, namely, Shri Waghmode who was selected in the State Services Main Examination 1998 and Shri Bargal who was selected in the State Services Main Examination 1995, that they belong to Dhangar caste and they have been selected against the posts reserved for the said caste after the GR dated 23/3/1994 was issued. All these four officers belonging to Dhangar caste and selected against the posts reserved for OBC, VJNT or NT-C were already in

service as the direct recruit appointees and, therefore, the petitioner's claim, that 3.5% quota available to NT-C was not filled in and at least one post was vacant when the State Services Main Examination 2001 was held, is unsustainable. We agree with the State Government that Shri Mandlik and Shri Shegar are required to be counted as the appointees by nomination against the seats reserved for NT-C.

13. In the result, we hold that the Tribunal's finding on both the issues, namely, the cadre strength in the post of Dy.S.P./ACP was 398 and the quota of four posts for NT-C was filled in when the State Services Main Examination 2001 was held, does not call for any interference and consequently, the petitioner's challenge to the impugned decision of the Tribunal must fail.

14. Hence, the petition is dismissed. Rule discharged, but without any order as to costs.

(S.R. Sathe,J.) **B.H. Marlapalle,J.)**